

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

ANTHONY MURFF,

Petitioner,

vs.

No. 06-2327-B/An

DAVID MILLS,

Respondent.

ORDER DENYING MOTIONS TO PROCEED IN FORMA PAUPERIS AS MOOT
AND

ORDER TRANSFERRING MOTION UNDER 28 U.S.C. § 2244(b)(3)
TO UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

Petitioner Anthony Murff, Tennessee Department of Correction prisoner number 331233, an inmate at the West Tennessee State Penitentiary ("WTSP") in Henning, Tennessee, filed a pro se petition pursuant to 28 U.S.C. § 2254 on May 26, 2006. On July 10 and July 11, 2006, Murff filed motions to proceed in forma pauperis, however, he also paid the habeas filing fee. Accordingly, the motions to proceed in forma pauperis are DENIED as moot. The Clerk shall record the respondent as David Mills. The Clerk shall not issue any process.

I. PROCEDURAL HISTORY

Following a jury trial in the Lauderdale County Circuit Court, Murff was convicted of especially aggravated robbery on February 23, 2001. He was sentenced on March 16, 2001 to sixty (60) years

imprisonment to be served at 100% as a Range III offender. The Tennessee Court of Criminal Appeals affirmed. State v. Murff, No. W2000-01459-CCA-R3-CD, 2002 WL 1284296 (Tenn. Crim. App. June 11, 2002).

Murff filed a pro se petition pursuant to the then-current version of the Tennessee Post-Conviction Procedure Act, Tenn. Code Ann. §§ 40-30-201 to -222, in the Lauderdale County Circuit Court on September 20, 2002 in which he alleged that he received ineffective assistance of counsel. Counsel was appointed to represent Murff and the postconviction court conducted an evidentiary hearing on February 7, 2003. The postconviction court dismissed the petition on February 10, 2003, and the Tennessee Court of Criminal Appeals affirmed, Murff v. State, No. W2003-00467-CCA-R3-PC, 2004 WL 367668 (Tenn. Crim. App. Feb. 26, 2004), perm. app. denied (Tenn. June 14, 2004).

On August 11, 2004, Murff filed a petition for a writ of habeas corpus, pursuant to Tenn. Code Ann. § 29-21-101 et seq., in the Lauderdale County Circuit Court. The trial court summarily denied the petition on August 16, 2004, and the Tennessee Court of Criminal Appeals affirmed, Murff v. Mills, No. W2004-02210-CCA-R3-HC, 2005 WL 195097 (Tenn. Crim. App. Jan. 28, 2005), perm. app. denied (Tenn. May 23, 2005).

On March 1, 2005, Murff filed a federal habeas petition under 28 U.S.C. § 2254, Murff v. Mills, No. 05-2164 (W.D. Tenn. Aug. 30,

2005), challenging his conviction and sentence. District Judge Jon Phipps McCalla issued an order on August 30, 2005 dismissing the petition for lack of merit. Murff did not appeal.

On May 26, 2006, Murff filed this federal habeas petition again attacking his conviction for especially aggravated robbery. He cannot file this petition in this district without obtaining permission from the United States Court of Appeals for the Sixth Circuit. The Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), Pub. L. 104-132, Title I, § 102, 110 Stat. 1220 (Apr. 24, 1996), amended 28 U.S.C. § 2244(b) to preclude the filing of any subsequent habeas petition absent permission from the Court of Appeals for the Circuit in which the district court is located. Under In re Sims, 111 F.3d 45, 47 (6th Cir. 1997), "when a second or successive . . . § 2255 motion is filed in the district court without § 2244(b)(3) authorization from [the Sixth Circuit], the district court shall transfer the document to this Court pursuant to 28 U.S.C. § 1631."

Murff filed his first federal habeas petition after the enactment of the AEDPA. He may not file another habeas petition in this district without obtaining permission from the United States Court of Appeals for the Sixth Circuit. 28 U.S.C. § 2244(b)(3)(A). As Murff's new petition is a successive petition without permission from the Court of Appeals, under Sims, 111 F.3d at 47, and 28 U.S.C. § 1631, it is hereby ordered that the Clerk of Court transfer this

petition to the United States Court of Appeals for the Sixth Circuit.¹

IT IS SO ORDERED this 29th day of May, 2007.

s/ J. DANIEL BREEN
UNITED STATES DISTRICT JUDGE

¹ The Clerk shall include in the documents transmitted herewith a copy of all documents from case number 05-2164-M1/V.